

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ACEY REAVIS,	)	
Plaintiff,	)	Civil Action No. 20-1284
v.	)	
PAUL AURANDT, BURKOVICH and	)	
LISA DUNCAN,	)	
Defendants.	)	
	)	

**OPINION**

Introduction

This case was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D. Defendants filed a motion for more definite statement (ECF No. 25). The magistrate judge filed a Report and Recommendation (“R&R”) (ECF No. 29), recommending that the motion be granted.

Subsequently, the court was notified that plaintiff Acey Reavis (“Reavis”) was released from prison and no longer located at SCI-Greene and may not have received notice of the R&R. The court mailed another copy of the R&R to Reavis’ new address, as reported by defense counsel. The court noted on the docket that it is Reavis’ obligation to keep the court apprised of changes to his address and to file a proper notice of his address change (ECF No. 30). To date, the court has received no response from Reavis.

Defendants filed a motion to dismiss the case for lack of prosecution (ECF No. 33). The magistrate judge issued an R&R recommending that the motion to dismiss be denied because the motion for a more definite statement remained unresolved (ECF No. 37).

With respect to both R&R’s, the parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule of Court 72.D.2,

objections to the R&R must be filed within 14 days, and that failure to file timely objections would constitute a waiver of appellate rights. No timely objections were filed to either R&R.

Legal Analysis

Even if no objections are filed, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; *see also McClain v. Pennsylvania Department of Corrections*, No. 1:19-CV-1951, 2020 WL 1690081, at \*1 (M.D. Pa. Apr. 7, 2020); *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (explaining that judges should review dispositive legal issues raised by the R&R for clear error).

Following an independent review of the record, the court is satisfied that the R&Rs contain no clear error and will therefore accept the recommendations of the magistrate judge. The amended complaint filed by the pro se plaintiff in this case (ECF No. 17) is not sufficient to enable the named defendants to prepare a response. Fed. R. Civ. P. 12(e). The magistrate judge recommended that Reavis be required to file a Second Amended Complaint and provided detailed instructions about what must be contained in that document (ECF No. 29 at 7-9). The court will adopt the R&R (ECF No. 29) as the opinion of the court, as supplemented herein.

The court recognizes that Reavis has failed to respond to the court’s orders for a significant period of time. Nevertheless, the court finds no clear error in the magistrate judge’s recommendation that defendant’s motion to dismiss this case for failure to prosecute be denied (ECF No. 37). Although perhaps unlikely, Reavis could be waiting on a decision about the motion for more definite statement. That motion is now resolved. Reavis will be given a firm and definite deadline to file a Second Amended Complaint in compliance with R&R #29. If he fails to do so, defendants will have the opportunity to seek dismissal of the case. The court will adopt the R&R (ECF No. 33) as the opinion of the court, as supplemented herein.

Conclusion

For the reasons set forth in the magistrate judge's R&Rs, which will be adopted as the opinions of this court as supplemented herein, the motion for more definite statement (ECF No. 25) will be GRANTED and the motion to dismiss this case for failure to prosecute (ECF No. 33) will be DENIED without prejudice.

Reavis shall file a Second Amended Complaint, which fully complies with the instructions set forth in R&R #29, on or before March 28, 2022. If Reavis fails to do so, defendants may file a new motion seeking dismissal of this case.

An appropriate Order will be entered.

BY THE COURT:

Dated: February 16, 2022

/s/ Joy Flowers Conti  
Joy Flowers Conti  
Senior United States District Court Judge

CC: (via US Mail)  
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